

Disciplinary and Other NASD Actions

REPORTED FOR MARCH

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of February 2005.

Firms Expelled, Individuals Sanctioned

Back Bay Capital, Inc. (CRD #22824, San Diego, California) and Albert Tommie Carazolez (CRD #2204105, Registered Principal, San Jose, California) submitted offers of settlement in which the firm was expelled from NASD membership. Carazolez was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Carazolez, encouraged and directed a registered representative acting under the firm's direction and control as its employee and agent to employ fraudulent sales practices and to make baseless price predictions and unsuitable recommendations of a security to public customers. In addition, the NASD found that Carazolez provided misleading documents and made false and misleading statements under oath in response to NASD's requests for information. The findings also stated that the firm and Carazolez egregiously failed to: supervise properly, establish and implement a supervisory compliance structure, and provide the firm's registered representatives with written supervisory procedures reasonably designed to prevent fraudulent sales practices. Furthermore, NASD found that the firm, acting through Carazolez, failed to: (1) register a person associated with the firm who was engaging in the firm's securities business and acting as a principal of the firm; and (2) name this associated person in Schedule A of the firm's Form BD, even though this person held an ownership interest of more than 5 percent of the firm. **(NASD Case #CMS040049)**

Clark Street Capital, Inc. (CRD #38304, Levittown, New York) and Marco Alfonsi (CRD #2770342, Registered Principal, Hicksville, New York) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. In addition, Alfonsi was suspended from association with any NASD member in all principal capacities for six months. Without admitting or denying the allegations, the firm and Alfonsi consented to the described sanctions and to the entry of findings that the firm failed to obtain signed and dated receipts from public customers evidencing the receipt of penny stock risk disclosure documents for purchase transactions. The findings also stated that the firm failed to document a review of a company's financial statements, and other material business information, to ensure that its representatives had a reasonable basis to recommend stock to clients.

NASD also found that the firm, acting through Alfonsi, failed to establish, maintain, and enforce an adequate supervisory system that was reasonably designed to achieve compliance with the penny stock rules. In addition, the findings stated that Alfonsi failed to supervise reasonably the representatives in his branch office to ensure compliance with the penny stock rules.

Alfonsi's suspension began February 22, 2005, and will conclude at the close of business August 21, 2005. (NASD Case #C07050005)

Firms Fined, Individuals Sanctioned

Pryor, Counts & Co., Inc. (CRD #11002, Philadelphia, Pennsylvania) and Malcolm Dermott Pryor, Sr. (CRD #368534, Registered Principal, Villanova, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. In addition, Pryor was suspended from association with any NASD member in any principal or supervisory capacity for 10 business days. Without admitting or denying the allegations, the firm and Pryor consented to the described sanctions and to the entry of findings that the firm participated in the underwriting of "hot issues" in which it sold shares in the public offerings to investment partnerships or corporations, and did not obtain sufficient information required for compliance. In addition, the NASD determined that the firm, acting through Pryor, failed to implement its written supervisory procedures in a manner sufficient to achieve compliance with informational requirements.

Pryor's suspension began February 22, 2005, and concluded at the close of business March 7, 2005. (NASD Case #C9A050001)

Firms and Individuals Fined

GunnAllen Financial, Inc. (CRD #17609, Tampa, Florida) and Stephen Irvin Saunders, IV (CRD #2873747, Registered Principal, Tampa Florida) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$11,250 jointly and severally, and the firm was also fined \$18,750, of which \$8,750 was assessed jointly and severally with another individual. Without admitting or denying the allegations, the firm and Saunders consented to the described sanctions and to the entry of findings that the firm failed to implement its anti-money laundering ("AML") program in a manner that was reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder by the Department of Treasury. The findings also

stated that the firm, acting through Saunders and another, permitted registered representatives to act in a capacity requiring registration when such persons were deemed inactive for failing to complete the Regulatory Element of Continuing Education. NASD also found that the firm, acting through Saunders, failed to report in a timely manner information regarding customer complaints to NASD, failed to file all information regarding customer complaints, and failed to report, within 10 business days, information regarding settlements of claims for damages against the firm and Registered Representatives and the receipt of a customer complaint alleging forgery. In addition, the findings stated that the firm, acting through an individual, failed to update in a timely manner the Forms U4 and U5 of registered representatives to disclose customer complaints, settlements, and/or arbitrations, as well as the Form U4 of Registered Representatives. The finding also stated that the firm, acting through Saunders, failed to ensure that all new account forms contained the signature of a partner, officer, or manager accepting the account on behalf of the firm. (NASD Case #C07050004)

Firms Fined

Crown Financial Group, Inc. (CRD #540, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$59,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to make/annotate an affirmative determination that the firm could borrow the securities or otherwise provide for delivery of the securities by settlement date. The findings also stated that the firm incorrectly designated as late through ACT last sale reports of transactions in NASDAQ National Market, OTC Equity, and SmallCap securities reported to ACT within 90 seconds of execution. NASD found that the firm incorrectly reported to ACT the second leg of "riskless" principal transactions in NASDAQ National Market and OTC equity securities and incorrectly designated the capacity of such transactions as principal and media report. NASD also found that the firm failed to report to ACT the correct symbol indicating whether it executed transactions in eligible securities in principal or agency capacity, and failed to report the correct execution time in transactions involving OTC equity securities. The findings also indicated that the firm executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. In addition, NASD determined that the firm made available a report on the covered orders in national market system securities that it received for execution. However, the report did not include all covered orders, and as a result, it contained inaccurate data with regard to near quote limit orders of shares in NASDAQ security

Antigenics, Inc. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning the 1% rule, Limit Order Display Rule, Order Handling Rule, order routing reports, order execution reports, short sales in CQS securities, educating of personnel concerning anti-competitive practices, trade reporting, best execution, ACT reporting, affirmative determination, bid test rule, record keeping, and OATS. The findings also stated that the firm failed to display immediately customer limit orders in NASDAQ securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. NASD determined that the firm failed to: preserve for a period of not less than three years, the first two in an accessible place, the memorandum of brokerage orders; report to OATS the correct replace time for orders that were cancelled or modified; and report to OATS the correct Limit Order Display indicator for orders. (NASD Case #CMS040222)

GRE Securities, LLC (CRD #123762, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it did not have in place a system for the retention of electronic mail as required by SEC Rule 17a-4. The findings also stated that the firm started to utilize electronic storage media as defined in SEC Rule 17a-4(f); however, it failed to notify NASD 90 days prior to employing such electronic storage media. (NASD Case #C10050002)

National Clearing Corp. (CRD #14343, Sherman Oaks, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured; fined \$80,000; ordered to pay \$5,384.21, plus interest, in restitution to public customers; and required to revise its written supervisory procedures with respect to maintaining a two-sided quotation. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it did not use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. In addition, NASD found that the firm failed to maintain a continuous two-sided quotation in the absence of an excused withdrawal or a functional excused withdrawal. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations, and the Rules

of NASD, concerning maintaining a two-sided quotation. (NASD Case #CLG050009)

Nexus Financial, Inc. (CRD #38528, Colorado Springs, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted individuals to function in a principal capacity while their registrations were inactive for failing to sit for the Regulatory Element of the Continuing Education requirement by the specified date. NASD also found that the firm failed to establish and maintain supervisory procedures, written or otherwise, reasonably designed to achieve compliance with rules pertaining to Regulatory Element Continuing Education. (NASD Case #C3A050007)

Stifel, Nicolaus & Co., Inc. (CRD #793, Saint Louis, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately customer limit orders in NASDAQ securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer and the national best bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. The findings also stated that the firm transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data and failed to submit the correct order receipt time to OATS. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning the Limit Order Display Rule. (NASD Case #CLG050006)

White Pacific Securities, Inc. (CRD #42505, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to revise its written supervisory procedures with respect to OATS and SEC Rule 11Ac1-6. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to make publicly available a report on its routing of non-directed orders in covered securities. NASD found that the firm submitted to OATS reports with respect to equity securities traded on the Nasdaq Stock Market that were not in the electronic form prescribed by NASD, and that the firm failed to report to OATS Reportable Order Events (ROEs) in a timely manner. In addition, the findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve

compliance with applicable securities laws and regulations, and the Rules of NASD, concerning OATS and SEC Rule 11Ac1-6. (NASD Case #CLG050001)

Individuals Barred or Suspended

John David Amick (CRD #4485089, Registered Representative, Pendleton, Indiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Amick reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Amick consented to the described sanction and to the entry of findings that he engaged in outside business activities by receiving compensation for providing financial planning services to public customers, and failed to give prompt written notice of his outside business activities to his member firm.

Amick's suspension began March 7, 2005, and will conclude at the close of business April 5, 2005. (NASD Case #C8A050009)

Andre Anderson, Sr. (CRD #2872133, Registered Representative, Barrington, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Anderson willfully failed to disclose material information on his Form U4. (NASD Case #C8A040055)

Penny Rechelle Boston (CRD #4707359, Registered Representative, Nampa, Idaho) submitted an Offer of Settlement in which she was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Boston reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Boston consented to the described sanctions and to the entry of findings that she willfully misrepresented material facts on her Form U4.

Boston's suspension began March 7, 2005, and will conclude at the close of business March 6, 2007. (NASD Case #C3B040026)

Raymond Lee Bowdich, Jr. (CRD #2051235, Registered Representative, Albuquerque, New Mexico) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bowdich consented to the described sanction and to the entry of findings that he caused the withdrawal of \$52,000 from the securities account of a public customer, obtained

possession of the withdrawn funds, and used them for his own benefit. The findings also stated that Bowdich failed to respond to NASD requests for information. (NASD Case #C3A050010)

Vincent James Cappetta (CRD #2471511, Registered Representative, North Babylon, New York) was barred from association with any NASD member in any capacity and ordered to pay \$24,552.24, plus interest, in restitution to public customers. The sanctions were based on findings that Cappetta made omissions of material fact in the course of his sales presentations of treasury bonds to public customers. The findings also stated that Cappetta effected qualitatively unsuitable transactions to public customers without having reasonable grounds for believing that his recommendations and transactions were suitable based on the customers' financial situations, investment objectives, and needs. NASD also found that Cappetta exercised discretionary trading authority in a public customer's account without obtaining the customer's prior written authorization and his member firm's prior written acceptance of the account as discretionary (NASD Case #C10040085)

Carmen Rosario Caro, (CRD #1949991, Registered Representative, San Juan, Puerto Rico) was barred from association with any NASD member in any capacity, and required to pay \$25,000, plus interest, in restitution to public customers. The sanctions were based on findings that, based on a signed withdrawal form and cover letter, Caro caused \$25,000 to be withdrawn from the annuity of public customers without their knowledge and mailed to another individual. The findings also stated that Caro failed to respond to NASD request for information. (NASD Case #C07040066)

Michael John Catanzaro (CRD #4800801, Registered Representative, Hauppauge, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Catanzaro reassociates with any NASD member or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Catanzaro consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Form U4.

Catanzaro's suspension began on March 7, 2005, and conclude at the close of business April 15, 2005. (NASD Case #CLI040037)

Robert James Christ (CRD #1100392, Registered Representative, Niagara Falls, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Christ reassociates with any NASD member

following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Christ consented to the described sanctions, and to the entry of findings that he engaged in business activity (for compensation) outside the scope of his business relationship with his member firm, and without providing the firm prompt written notice of this activity.

Christ's suspension began March 7, 2005, and will conclude at the close of business June 6, 2005. **(NASD Case #C9B050006)**

Benjamin Lee Coyner (CRD #4253091, Registered Representative, Placentia, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Coyner reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Coyner consented to the described sanctions and to the entry of findings that he forged a college administrator's signature on student Intern Agreement forms in an effort to facilitate the interns' participation in his member firm's summer program.

Coyner's suspension began February 22, 2005, and will conclude at the close of business February 21, 2006. **(NASD Case #C02050005)**

Arthur Marc Davidson (CRD #2876412, Registered Representative, Cherry Hill, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Davidson consented to the described sanctions and to the entry of findings that he signed a public customer's name on Financial Advisory Service agreements and Mutual Fund Redemption forms without the customer's permission or knowledge. **(NASD Case #C9B050009)**

Derrick Ross Edward Doba (CRD #2283550, Registered Principal, Marina Del Rey, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for four months. In light of the financial status of Doba, no monetary sanctions have been imposed. Without admitting or denying the allegations, Doba consented to the described sanction and to the entry of findings that he engaged in private securities transaction without prior notice to and approval from his member firm.

Doba's suspension began February 22, 2005, and will conclude at the close of business June 21, 2005. **(NASD Case # C02040056)**

Patrick W. Donohue (CRD #4168054, Registered Representative, Moreno Valley, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Donohue forged a public customer's signature to effect wire transfers and transferred \$6,000 from the customer's account at his member firm to his personal bank account, thereby converting the funds to his own use and benefit. The findings also stated that Donohue failed to respond to NASD requests for information. **(NASD Case #C02030030)**

Timothy Robert Evans (CRD #2112351, Registered Representative, Lake Hopatcong, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to pay \$6,000 in restitution to a public customer. The fine and restitution must be paid before Evans reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Evans consented to the described sanctions and to the entry of findings that he made a recommendation to a public customer without having a reasonable basis for believing that the recommendation was suitable for the customer in light of the customer's investment objectives, financial situation, and needs.

Evans' suspension began February 22, 2005, and will conclude on August 21, 2005. **(NASD Case #C9B050002)**

David Gerald Gillard (CRD #4461228, Registered Representative, Fort Collins, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 days. The fine must be paid before Gillard reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gillard consented to the described sanctions and to the entry of findings that he exercised discretion in a public customer's account without obtaining the customer's prior written authorization or the written acceptance of the account as discretionary by his member firm.

Gillard's suspension began March 7, 2005, and will conclude at the close of business March 21, 2005. **(NASD Case #C3A050009)**

William Robert Goodhue (CRD #225161, Registered Representative, Wellington, Florida) submitted an Offer of Settlement in which he was fined \$9,800 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Goodhue reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or

denying the allegations, Goodhue consented to the described sanctions and to the entry of findings that he recommended the purchase of mutual funds to a public customer although, based on the amounts being invested by the customer, Goodhue's recommendations were unsuitable, in that they were not the lowest cost available. NASD found that the customer could have invested in Class D shares in the respective mutual funds by paying lower ongoing expenses than the class B shares which he purchased, and without paying any up-front sales charges.

Goodhue's suspension began December 10, 2004, and concluded at the close of business December 23, 2004. (NASD Case #C07040054)

Albert Joseph Gornatti, Jr., (CRD #4175310, Registered Principal, Little Rock, Arkansas) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gornatti consented to the described sanctions and to the entry of findings that he issued 13 checks totaling \$14,001.78, made payable to himself from the operating account of the member firm. NASD found that Gornatti converted the funds to his own use and benefit by endorsing and negotiating the checks without the knowledge or consent of his member firm, and concealed his activities by falsifying the general ledger and altering bank statements. (NASD Case #C05050002)

Myrle C. Grose Jr. (CRD #2265918, Registered Representative, Ridgeley, West Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Grose consented to the described sanctions and to the entry of findings that he misappropriated approximately \$1.2 million from public customers intended for investment in securities. The findings stated that instead, Grose converted the funds to his own use and benefit. NASD also found that Grose failed to respond to NASD requests for information. (NASD Case #C9B050005)

Alicia Ann Hiller (CRD #4265601, Registered Representative, Marina Del Rey, California) submitted a Letter of Acceptance, Waiver, and Consent in which she was suspended from association with any NASD member in any capacity for three months. In light of financial status of Hiller, no monetary sanctions have been imposed. Without admitting or denying the allegations, Hiller consented to the described sanction and to the entry of findings that she engaged in private securities transactions without prior notice to and approval from her member firm.

Hiller's suspension began February 22, 2005, and will conclude at the close of business May 21, 2005. (NASD Case #C02040057)

Lori A. Huck (CRD #4190301, Registered Representative, Greenfield, Wisconsin) was barred from association with any NASD member in any capacity. The sanction was based on findings that Huck endorsed and deposited into her personal securities and bank account checks totaling \$59,079.69, meant for her member firm, without the firm's knowledge or consent, and used the proceeds for her own benefit or for the benefit of someone other than the firm. NASD also found that Huck received a \$10,000 check, made payable to her member firm, with instructions to deposit the check into the account of a public customer. Huck deposited the funds into her own personal securities account and used the funds for some purpose other than for the benefit of the customer. She later had the deposit reversed and credited to the customer's securities account. In addition, the findings stated that Huck endorsed and deposited into her personal securities account checks totaling \$2,800, made payable to her member firm, and used the proceeds of the checks for her own benefit or for the benefit of someone other than the customer. NASD also found that Huck failed to respond to NASD requests for documents and information. (NASD Case #C8A040069)

Jeffrey Michael Hug (CRD #2287115, Registered Representative, Aurora, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hug consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for documents and information. (NASD Case #C3A050004)

Barry Alan Kaufman (CRD #2774898, Registered Representative, Boca Raton, Florida) was barred from association with any NASD member in any capacity and ordered to pay \$34,832.98, plus interest, in restitution to public customers. The sanctions were based on findings that Kaufman effected unauthorized securities transactions in the accounts of public customers. The findings also stated that Kaufman failed to execute customer orders. (NASD Case #CAF030061)

Ki-Moon Kim (CRD #4765910, Registered Representative, Salt Lake City) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kim consented to the described sanction and to the entry of findings that he withdrew or transferred \$26,988 from the bank accounts of public customers without their authorization. The findings also stated that Kim changed the mailing address on a public customer's account form to his branch office address without the consent or knowledge of the customer. (NASD Case #C3A050006)

David J. Lanzatella (CRD #1747171, Registered Representative, Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred

from association with any NASD member in any capacity. Without admitting or denying the allegations, Lanzatella consented to the described sanctions and to the entry of findings that he willfully failed to amend his Form U4 to disclose a material fact. The findings also stated that Lanzatella failed to respond to NASD requests for information regarding the non-disclosure. **(NASD Case #C9B050010)**

Alex Livak (CRD #4421506, Registered Representative, Astoria, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Livak reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Livak consented to the described sanctions and to the entry of findings that he prepared and submitted, or caused to be prepared and submitted, a letter to his landlord that contained a fabricated story as to why he could not pay his rent. NASD found that the letter was written on his member firm's letterhead and was purportedly signed by the "Director of Security, NASD." The findings also stated that the individual who signed the letter was Livak's friend and had never been an employee of NASD or his member firm. In addition, NASD determined that Livak prepared and submitted a variable life insurance policy application to his member firm that contained false and inaccurate information.

Livak's suspension began January 18, 2005, and will conclude at the close of business January 17, 2007. **(NASD Case #C10040114)**

Herman Forrest Lombard (CRD #1664771, Registered Representative, Papillion, Nebraska) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Lombard reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lombard consented to the described sanctions and to the entry of findings that he engaged in private securities transactions totaling \$256,000 without notifying his member firm of these transactions and his proposed role therein, and without receiving prior written approval from his member firm.

Lombard's suspension began March 7, 2005, and will conclude at the close of business September 6, 2005. **(NASD Case #C04050006)**

Stephen Michael Magee (CRD #2469731, Registered Principal, Portland, Oregon), Phillip Bradley Blackwell (CRD #4318779, Registered Representative, New York, New York), and Gary John Ferrara (CRD #2496815,

Registered Representative, Verona, New Jersey) submitted an Offer of Settlement in which Magee was fined \$10,000 and suspended from association with any NASD member in any capacity for two years, and Blackwell and Ferrara were barred from association with any NASD member in any capacity. The fine must be paid before Magee reassociates with any NASD member or before requesting relief from statutory disqualification. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that while acting individually and as members of a group of salespersons, they employed classic boiler-room techniques to induce customers to purchase shares of a company. NASD found that the members of the group engaged in fraudulent misrepresentations and omissions to induce purchases or to discourage sales of shares in a company and routinely predicted the stock would shortly increase in price. The findings also stated that they engaged in unauthorized trading, as well as other deceptive practices, including buying more than the customer authorized or insisting that the customer pay for an unauthorized trade before selling the stock. In addition, NASD determined that each member of the group knowingly or recklessly provided substantial assistance to other members of the group engaged in the same or similar misconduct, in furtherance of the scheme. The findings also included that the respondents and members of the group failed to furnish customers, prior to effecting such transactions, a risk disclosure document containing the information required by penny stock rules and failed to obtain from customers, prior to effecting customer transactions in a stock, a manually signed and dated written statement acknowledgement receipt of such risk disclosure documents. The findings also stated that they failed to: (1) disclose to customers, either orally or in writing, prior to effecting customer transactions in a stock, the inside bid and offer quotations for the stock; (2) provide the same in writing prior to the time of any written confirmation sent to the customer pursuant to SEC Rule 10b-10; and (3) keep and preserve records of such disclosures as required by the penny stock rules.

Magee's suspension will begin at the opening of business October 19, 2005, and conclude on the close of business October 18, 2007. **(NASD Case #CMS040165)**

Paul Brian Meyers (CRD #3062786, Registered Representative, Lexington, Kentucky) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Meyers reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Meyer consented to the described sanctions and to the entry

of findings that he affixed the signature of a public customer on a Letter of Intent Form without the customer's knowledge or consent, and submitted the form to his member firm. In addition, NASD found that Meyer affixed the signature of a public customer on a transfer form and check and submitted these to his member firm to transfer funds from the customer's account to a bank account held in the customer's name.

Meyer's suspension began March 7, 2005, and will conclude at the close of business June 4, 2005. (NASD Case #C8A050005)

Eric David Mistal (CRD # 4762304, Registered Representative, Westchester, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for four months. The fine must be paid before Mistal reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mistal consented to the described sanction and to the entry of findings that he failed to disclose material information on his Form U4.

Mistal's suspension began March 7, 2005, and will conclude at the close of business July 6, 2005. (NASD Case #C8A050006)

Mark Francis Mizenko (CRD #1812411, Registered Representative, Kent, Ohio) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following review of an OHO decision. The sanction was based on findings that Mizenko forged the signature of a corporate officer of his member firm to a corporate resolution that was used to guarantee payments to an automobile dealership in association with a program to attract clients. Mizenko has appealed the action to the SEC and the sanctions, with the exception of the bar, are not in effect pending consideration of the appeal. (NASD Case #C8B030012)

Terry Alexander Moore (CRD #4115171, Registered Representative, Adel, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Moore consented to the described sanctions and to the entry of findings that he made an unsuitable sub-account allocation recommendation to a public customer in connection with a variable annuity purchase.

Moore's suspension began February 22, 2005, and will conclude at the close of business March 7, 2005. (NASD Case #C07050002)

Marcus Kalman Nagel (CRD#2170816, Registered Representative, New York, New York) was barred from association with any NASD member in any capacity. The sanctions were based on finding that Nagel improperly used customer funds when he commingled customer funds, intended for the customer's securities account, with his own funds. NASD also found Nagel failed to respond to NASD requests for information. (NASD Case #C10040082)

Phillip Mauro Nuciola III (CRD #2558471, Registered Representative, Mesa, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 20 days. Without admitting or denying the allegations, Nuciola consented to the described sanctions and to the entry of findings that he failed to provide prompt written notice of his outside business activities to his member firm.

Nuciola's suspension began March 7, 2005, and will conclude at the close of business March 26, 2005. (NASD Case #C3A050008)

Ryan Nicholas Ourth (CRD #4659110, Registered Representative, Itasca, Illinois) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before Ourth reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ourth consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Ourth's suspension began March 7, 2005, and will conclude at the close of business April 20, 2005. (NASD Case #C8A040090)

Nicholas Harrel Patton, Jr., (CRD #1545508, Registered Supervisor, Little Rock, Arkansas) was barred from association with any NASD member in any capacity and ordered to pay \$27,214.25, plus interest, in restitution to his member firm. The sanctions were based on findings that Patton received checks totaling \$27,214.25 from public customers for investment purposes and deposited the checks into his personal account without the customers' knowledge or consent. The findings also stated that Patton failed to respond to NASD requests for information. (NASD Case #C05040063)

Anthony George Peterson (CRD #1902189, Registered Representative, Champaign, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Peterson

consented to the described sanction and to the entry of findings that he engaged in outside business activities by receiving compensation for selling viaticals, and failed to give prompt written notice of his activities to his member firm. (NASD Case #C8A050007)

Scott Steven Powell (CRD #1987773, Registered Representative, Bellevue, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Powell consented to the described sanctions and to the entry of findings that he affixed his wife's signature to a letter addressed to the member firm where her securities account was maintained without her knowledge or consent. The findings stated the letter requested the registration and taxpayer I.D. number of the account be changed, effectively transferring control of the account from his wife to himself.

Powell's suspension began December 16, 2004, and will conclude at the close of business March 15, 2005. (NASD Case #C3B040029)

Memory Ursula Pritchard (CRD #1139894, Registered Representative, Templeton, California) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$12,073, which includes disgorgement of commissions of \$2,073, and suspended from association with any NASD member in any capacity for 12 months. The fine must be paid before Pritchard reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Pritchard consented to the described sanctions and to the entry of findings that she participated in private securities transactions, received \$53,073 in commission, and failed to provide prior written or oral notification to, and receive prior written approval from, her member firm.

Pritchard's suspension began February 22, 2005, and will conclude at the close of business February 21, 2006. (NASD Case #C02050004)

Robert James Quinn (CRD #4252849, Registered Representative, Freeland, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Quinn consented to the described sanctions and to the entry of findings that he forged a public customer's signature on a form requesting a partial withdrawal of funds from the customer's variable annuity without the customer's knowledge or consent. (NASD Case #C9A050003)

Bhola Ramsundar (CRD #1132717, Registered Representative, Floral Park, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Ramsundar reassociates with any NASD member or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Ramsundar consented to the described sanctions and to the entry of findings that he falsified an Electronic Funds Transfer ("EFT") form for the variable life insurance account of public customers.

Ramsundar's suspension began March 7, 2005, and will conclude at the close of business March 6, 2006. (NASD Case # CL1040028)

Paul Victor Roddy, Jr. (CRD #4665217, Registered Representative, Glen Burnie, Maryland) was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Roddy reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. The sanctions were based on findings that Roddy willfully misrepresented material facts on his record on a Form U4.

Roddy's suspension began on January 17, 2005, and will conclude at the close of business January 16, 2006. (NASD Case #C9A040020)

Victor Rene Rogers, II (CRD #4637131, Registered Representative, Denver, Colorado) was barred from association with any NASD member in any capacity. The sanction was based on findings that Rogers willfully failed to disclose material information on his Form U4. The NASD also found that Rogers failed to respond to written requests for information. (NASD Case #C3A040038)

Luke Herbert Scheibner (CRD #4721020, Registered Representative, Milford, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid upon Scheibner's reassociation with any NASD firm or prior to requesting relief from any statutory disqualification. Without admitting or denying the allegations, Scheibner consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

The suspension began on February 22, 2005, and will conclude at the close of business on April 4, 2005. (NASD Case #C9B050003)

Susanne Olivia Sites (CRD #4758594, Registered Representative, Las Vegas, Nevada) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Sites reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sites consented to the described sanctions and to the entry of findings that she failed to disclose a material fact on her Form U4.

Sites' suspension began March 7, 2005, and will conclude at the close of business September 6, 2005. **(NASD Case #C02050007)**

Reuel Clarion Swanson (CRD #1208652, Registered Principal, Spokane, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and barred from association with any NASD member in any principal capacity. Without admitting or denying the allegations, Swanson consented to the described sanctions and to the entry of findings that he, acting on behalf of his member firm, had a supervisory system and written supervisory procedures that were inadequate and did not appropriately deter and detect violations of NASD rules, which included misrepresentations and omissions in the sale of its proprietary products, unsuitable recommendations, and inadequate review and approval of sales of proprietary products. In addition, NASD determined that Swanson failed to take effective supervisory action in the face of red flags indicating improper sales practices by registered representatives. **(NASD Case #C3B040024)**

Robert Jerome Toohey (CRD #854174, Registered Principal, Parkville, Maryland) submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for five business days, and barred from associating with any NASD member in a supervisory capacity as a General Securities Principal. Without admitting or denying the allegations, Toohey consented to the described sanctions and to the entry of findings that he failed to supervise adequately the activities of a registered representative in connection with the publication of a press release and a summary buy recommendation that contained certain misleading, exaggerated, and unwarranted claims and omissions of material fact.

Toohey's suspension began November 5, 2004, and concluded at the close of business November 11, 2004. **(NASD Case #CMS040016)**

Patrick Clark Toole (CRD #1092734, Registered Principal, New Orleans, Louisiana) submitted an Offer of Settlement in

which he was fined \$10,000 and suspended from association with any NASD member in any principal capacity for six months. Without admitting or denying the allegations, Toole consented to the described sanctions and to the entry of findings that he failed to: (1) establish, maintain, and enforce an adequate system reasonably designed to comply with NASD rules regarding exception reports; and (2) supervise activities in connection with the sale of variable annuity and variable life products. The findings also stated that Toole failed to supervise an agent adequately, in that he neither conditioned the agent's employment upon heightened supervision nor put a plan of heightened supervision into effect. NASD also found that Toole failed to maintain and enforce written supervisory procedures requiring annual compliance conferences with registered representatives, and to respond reasonably to red flags raised by a customer complaint.

Toole's suspension began March 7, 2005, and will conclude at the close of business September 6, 2005. **(NASD Case #C05040082)**

Ronald Dean Udy (CRD #1981077, Registered Representative, Brigham City, Utah) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,500, suspended from association with any NASD member in all capacities for 25 days, and then suspended from association with any NASD member in a principal or supervisory capacity for 25 days. Without admitting or denying the allegations, Udy consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to his member firm. NASD also found that Udy acted in a supervisory capacity at his member firm without registration as a general securities principal or investment company and variable contract products principal.

Udy's suspension, in any capacity, will begin on March 7, 2005, and conclude at the close of business March 31, 2005. Udy's suspension, in any principal or supervisory capacity, will begin on April 1, 2005, and conclude at the close of business April 25, 2005. **(NASD Case #C3A050005)**

Nancy A. Wilson (CRD #4673980, Associated Person, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wilson consented to the described sanction and to the entry of findings that she failed to respond to NASD requests for information. **(NASD Case #C06040030)**

April Langt Wright (CRD #2557254, Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$10,000 and suspended from association with any NASD member in any

capacity for one year. The fine must be paid before Wright reassociates with any NASD member or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Wright consented to the described sanctions and to the entry of findings that she altered the dates in the signature pages of public customers' Securities Purchase Agreements submitted in connection with a private placement offered by her member firm.

Wright's suspension will begin on March 7, 2005, and conclude at the close of business March 6, 2006. (NASD Case #C10040117)

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of February 25, 2005. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

Philippe Noel Keyes (CRD #1172528, Registered Representative, Valencia, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that he engaged in private securities transactions without providing prior written notice to, and prior written approval from, his member firm. The finding also stated that Keyes used unbalanced and misleading sales literature in connection with the recommendation and sale of securities.

This decision has been appealed to the NAC, and the sanction is not in effect, pending consideration of the appeal. (NASD Case #C02040016)

Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Robert Payne Crider (CRD #3237093, Registered Representative, San Antonio, Texas) was named as a respondent in an NASD complaint alleging that he made recommendations to a public customer that were unsuitable, in that the recommendations were inconsistent with the

customer's age, net worth, investment experience, investment objectives, risk tolerance, and time horizon. (NASD Case #C06050003)

Lawrence Nallie (CRD #2364153, General Securities Representative, New Albany, Ohio) was named as a respondent in an NASD complaint alleging that he misused customer funds totaling \$6,500. The complaint also alleges that Nallie engaged in outside business activities without providing prompt written notice of his activities to the member firm and failed to respond to NASD requests for information. (NASD Case #C8A050004)

Andrew James Patton (CRD #2428998, Registered Representative, Fort Collins, Colorado) was named as a respondent in an NASD complaint alleging that he made material misrepresentations of fact in selling long-term callable CDs to public customers in order to induce the customers, purchases. The complaint also alleges that Patton inappropriately exercised the death-put feature of a CD and caused the issuer to bear the loss, in that the death-put feature was invalid under the terms of the certificate of deposit because the account did not hold the CD at the time of the account owner's death. (NASD Case #C05050003)

Elangovan Surendran (CRD #2658729, Registered Representative, Mineola, New York) was named in an NASD complaint alleging that he directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly used or employed, in connection with the purchase or sale of securities, manipulative or deceptive devices or contrivances, and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. The complaint also alleged that Surendran recommended securities transactions to a public customer without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size and frequency of the transactions, the nature of the account, and the customer's financial situation, investment objectives, and needs. (NASD Case #C9B050008)

Andrew Barrett Vaughley (CRD #2453108, Registered Representative, Seattle, Washington) was named as a respondent in an NASD complaint alleging that he, by the use of instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud public customers and their registered representative, by making untrue statements of material facts and/or failing to state material facts necessary, in light of the circumstances, to make the statements not misleading in connection with purchase of securities. The complaint further alleges that Vaughley harassed NASD staff and a witness in an NASD investigation. (NASD Case #C3B050004)

Firms Expelled for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320

Chicago Capital, Inc.
Chicago, Illinois
(January 31, 2005)

Program Trading Corp.
Boca Raton, Florida
(January 31, 2005)

Firms Suspended for Failure to Supply Financial Information

The following firms were suspended from membership in NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 9552. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Blue Marble Financial, LLC
Irving, Texas
(February 1, 2005)

Individuals Barred Pursuant to NASD Rule 9552 for Failure to Provide Information Requested Under NASD Rule 8210

Richard Samuel Hollander
Boca Raton, Florida
(February 3, 2005)

Michael McFerron Pope
Pittsburgh, Pennsylvania
(February 3, 2005)

Individuals Suspended Pursuant to NASD Rule 9552 for Failure to Provide Information Requested Under NASD Rule 8210

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Michael John Assenza
Boca Raton, Florida
(February 7, 2005)

Damon J. Dombroski
Higganum, Connecticut
(February 7, 2005)

James Anthony Dvorznak
Dix Hills, New York
(January 31, 2005)

Roger Mezhibovsky
Holmdel, New Jersey
(January 28, 2005)

Richard Springer Jones
West Melbourne, Florida
(February 9, 2005)

Sean P. Ryan
Boca Raton, Florida
(January 29, 2005)

Individuals Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply with an Arbitration Award or a Settlement Agreement

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Thomas Andrew Bower, Jr.
Ford City, Pennsylvania
(February 8, 2005)

Lawrence Joseph Ferrari
Uppersaddle River, New Jersey
(February 7, 2005)

Keith Martel Russell
Fort Lauderdale, Florida
(February 17, 2005)

NASD Issues Summary Suspension of Brokerage LH Ross

NASD issued a summary suspension of Boca Raton, FL-based brokerage LH Ross & Company, Inc., based on its determination that the firm is in such financial or operational difficulty that it cannot be permitted to continue to do business as a member with safety to investors, creditors, other members or NASD. The suspension prevents LH Ross from doing business and was effective immediately. The firm has requested a hearing to set aside the summary suspension.

NASD Charges California Broker with Fraud in Municipal Securities Transactions

Broker's Superior Fined, Suspended for Failure to Supervise

NASD charged California-based broker Marshall J. Field, formerly of American National Municipal Corp., with fraud in the offering and sale of municipal securities in violation of federal securities laws and Municipal Securities Rulemaking Board (MSRB) rules.

In its complaint, NASD charged Field with making material misrepresentations and omissions in connection with the purchase and sale of municipal securities and executing unauthorized municipal securities transactions in his clients' accounts. NASD also charged Field with violating the prohibition on guaranteeing an investor against a loss.

According to the complaint, Field, the majority owner of now-defunct American National Municipal Corp., recommended and sold municipal securities to seven investors, most of whom were elderly, without disclosing the accompanying risks. Specifically, Field recommended securities that were special, limited obligations and failed to disclose that the securities were not backed by the full faith and credit of the subject municipalities. In fact, the securities were revenue bonds and certificates of participation payable solely from anticipated sources of revenues. The complaint charged that Field did not disclose that the municipal securities involved a high degree of risk and that investors could lose their entire investments. The complaint also alleged that Field misrepresented that investments in these securities were safe and that the investors' initial investments were secure. The municipal securities have all since defaulted and the investors lost significant portions of their initial investments.

In addition to making material misrepresentations and omissions, the Complaint alleged that Field executed a total of 25 unauthorized transactions involving high-risk municipal

securities in multiple investors' accounts. In all, nine investors suffered losses of approximately \$325,000 because of Field's misconduct.

Finally, NASD charged Field with guaranteeing a customer against a loss in connection with her purchases of a municipal security.

Field's firm, American National Municipal Corp. of Woodland Hills, CA, withdrew its registration with NASD in September 2004.

In a related action, John T. Ford, Field's former supervisor, was fined and suspended for one year from working in any supervisory capacity for any NASD-registered firm for failing to supervise Field's municipal securities sales practices. Ford neither admitted nor denied NASD's charges, but consented to the entry of NASD's findings.

NASD Fines Former Jesup & Lamont Research Analyst for Trading Contrary to His Own Recommendations

Gary Davis Suspended from Industry for Six Months, from Research for 18 Months; Jesup & Lamont, Chief Compliance Officer Charged with Supervisory Failures

NASD fined and suspended former Jesup & Lamont Securities Corporation research analyst Gary Davis for trading contrary to the recommendations in his research reports and for other violations relating to his activities as a research analyst. Davis was suspended from the industry for six months, fined \$130,000 and prohibited from acting as a research analyst for 18 months. Nearly \$117,000 of his fine represents profits Davis made through his unlawful trading.

NASD also charged Jesup & Lamont, a New York City broker-dealer, and its chief compliance officer, Robert Strong, with failing to adequately supervise Davis.

NASD found that from January 2002 to September 2003, Davis authored 12 research reports with "buy" or "strong buy" recommendations. On 41 separate occasions after these research reports were published, Davis executed sales of shares of companies he covered that were inconsistent with the "buy" or "strong buy" recommendations in his reports. Davis sold a total of 215,657 shares in seven different securities and netted profits of more than \$116,500. Those trades were executed in his personal investment accounts at Jesup & Lamont.

"The rules are clear. Analysts may not profit from the recommendations in their research reports," said NASD Vice Chairman Mary L. Schapiro. "Analysts must, at all cost, avoid conflicts of interest when they own and trade securities they cover. In this case, the analyst not only traded in violation of NASD rules—his firm and the analyst's supervisor failed to detect and prevent his illegal trading."

Davis also executed four trades in securities he covered during what is known as the "quiet period" surrounding the publication of research reports. NASD rules prohibit research analysts from buying or selling a security that the analyst is covering for a period beginning 30 days before the research report is issued and continuing for five additional days after the report is published. In addition, Davis also failed to include numerous required disclosures in his research reports—including a disclosure that he had a financial interest in securities covered by his reports.

In settling this matter, Davis neither admitted nor denied the charges, but consented to the entry of NASD's findings.

In a related action, NASD has charged Jesup & Lamont and its chief compliance officer, Robert Strong, for failing to detect and prevent the illegal trading activity by Davis and for other violations relating to research reports published by the firm. Strong was responsible for supervising Jesup & Lamont's research analysts, which included reviewing research reports and the trading activity of research analysts. Despite the fact that Davis's illegal trading activity occurred in his personal accounts at Jesup & Lamont, Strong failed to prevent Davis from trading contrary to the recommendations in his research reports, and failed to prevent him from trading during the "quiet period" surrounding the publication of his research reports. Strong also failed to ensure that the research reports published by Jesup & Lamont included all disclosures required by NASD rules.

Jesup & Lamont and Robert Strong have requested a hearing before an NASD disciplinary panel.

NASD Fines Quick & Reilly, Piper Jaffray \$845,000 for Directed Brokerage Violations

NASD fined Quick & Reilly, Inc. (now part of Banc of America Investment Services, Inc.) \$570,000 and Piper Jaffray & Co. \$275,000 for directed brokerage violations. In imposing sanctions against Piper Jaffray, NASD took into account the fact that the firm self-reported its violative conduct after conducting its own internal review. The two cases are the latest enforcement actions in NASD's ongoing effort to crack down on directed brokerage abuses.

NASD found that both firms operated "preferred partner" or "shelf space" programs, giving favorable treatment to funds offered by certain mutual fund companies in return for brokerage commissions and other payments. That special treatment included higher visibility on the firms' internal websites, increased access to the firms' sales forces, participation in "top producer" or training meetings, and promotion of their funds on a broader basis than was available for other funds. That conduct violated NASD's "Anti-Reciprocal Rule" which prohibits firms from favoring the sale of shares of particular mutual funds on the basis of brokerage commissions.

"The purpose of the rule is to help eliminate conflicts of interest in the sale of mutual funds," said Mary L. Schapiro, NASD Vice Chairman. "These sorts of arrangements encourage the inappropriate use of mutual fund commission dollars and have the potential to improperly influence a firm's judgment when making recommendations to their clients."

Both firms offered a preferred partner program to a relatively small number of mutual fund families. Piper Jaffray, which operated its preferred partner program from 1998 to 2003, included only 12 to 15 fund complexes in the program, but sold funds offered by more than 100 fund complexes. Quick & Reilly maintained its program from 2001 to 2003 and included only 16 to 20 fund complexes, while it sold funds offered by about 300 fund complexes.

The participating mutual fund companies paid the firms extra fees in addition to regular sales fees. Piper Jaffray negotiated those extra payments with mutual fund companies each year, asking for minimum payments of \$100,000 to \$125,000. Some fund complexes paid a flat fee; others paid amounts based on a percentage of gross fund sales and the average daily assets under management for the fund complex. Quick & Reilly charged participating fund complexes 10 basis points on the gross amount of sales and five basis points on the average daily assets under management, subject to a minimum annual payment of \$75,000.

Several of the funds participating in the preferred partner programs paid part or all of the extra fees by directing the funds' brokerage business to the firms. The commissions were generated by the funds through portfolio transactions which the funds executed either through the firm, in the case of Piper Jaffray, or through an affiliate or third party, in the case of Quick and Reilly.

Piper Jaffray, on its own initiative, conducted an internal review of the general subject matter involved in the case and self-reported its findings to NASD staff. "This type of self-examination and self-reporting by a registered firm benefits NASD's enforcement program and investors by allowing for cost-effective enforcement and timely remedial action, and

was taken into account in assessing sanctions against Piper Jaffray,” Schapiro said.

In settling these matters, the two firms neither admitted nor denied the charges, but consented to the entry of NASD’s findings.

NASD has brought three previous actions for similar violations. In February 2005, NASD charged American Funds Distributors with violating NASD’s Anti-Reciprocal Rule by directing approximately \$100 million in brokerage commissions over a three-year period to about 50 brokerage firms that were the top sellers of American Funds. In November 2003, NASD sanctioned Morgan Stanley DW Inc. for giving preferential treatment to certain mutual fund companies in return for approximately \$15 million in brokerage commissions. That case was brought in conjunction with an action filed by the Securities and Exchange Commission in which Morgan Stanley agreed to pay \$50 million in civil penalties and surrendered profits. In December 2004, Edward D. Jones & Co., L.P., agreed to pay \$75 million in resolution of charges that it failed to adequately disclose revenue sharing payments that it received from a select group of mutual fund families that it recommended to its customers, that it received directed brokerage payments in violation of the Anti-Reciprocal rule, and for other violations in settlements with NASD, the Securities and Exchange Commission, and the New York Stock Exchange.

NASD Charges American Funds Distributors, Inc. with Arranging \$100 Million in Directed Brokerage Commissions for Top Sellers of American Funds

NASD charged American Funds Distributors, Inc. (AFD) with violating NASD’s Anti-Reciprocal Rule by directing approximately \$100 million in brokerage commissions over a three-year period to about 50 brokerage firms that were the top sellers of American Funds. The payments were made to reward the firms for past sales and to encourage future sales of American Funds’ 29 mutual funds.

AFD is the principal underwriter and distributor of American Funds, the third largest mutual fund family in the U.S. with more than \$450 billion in assets and approximately 25 million shareholder accounts. The commissions were payments for executing trades for the American Funds’ portfolio that were directed to the brokerage firms as additional compensation for past sales of American Funds, and to ensure that American Funds would continue to receive preferential treatment at those firms.

NASD’s “Anti-Reciprocal Rule,” which first became effective in July 1973, is designed to prevent quid pro quo arrangements in which brokerage commissions, which are assets of the shareholders of the mutual funds, are used to compensate brokerage firms for selling the funds’ shares. The rule also is designed to ensure that the execution of portfolio transactions by brokerage firms is guided by the principle of “best execution” and not by other considerations. In addition, the rule is meant to eliminate the danger that a brokerage firm, when recommending mutual funds to customers, will base its recommendations on the additional rewards the firm may receive in portfolio commissions from the funds rather than on the investment needs of the customer.

“Prior cases in this area have focused on retail firms that received directed brokerage payments from mutual fund companies in exchange for giving preferential treatment to their funds,” said NASD Vice Chairman Mary L. Schapiro. “Today’s action makes clear that it is just as impermissible to offer and make such payments as it is to receive them.”

NASD’s complaint alleges that, between 2001 and 2003, AFD calculated “target commissions” that it intended to direct to each of the top-selling retailers of American Funds according to a formula that was based upon each of the firms’ prior year’s sales of American Funds. AFD communicated to each of these retail firms the specific amount of that firm’s “target commissions” for the upcoming year and the fact that the amount was a function of the firm’s prior year’s sales of American Funds, typically 10 or 15 basis points of those sales. At the same time, AFD also discussed with the top-selling retail firms the benefits that AFD expected to receive pursuant to the sponsorship arrangements, such as the inclusion of American Funds on the firms’ “preferred fund” or “recommended fund” lists, and enhanced access to the firms’ sales forces.

According to NASD’s complaint, at the beginning of each year between 2001 and 2003, AFD provided a chart to the trading desk at AFD’s parent company, Capital Research and Management Company (CRMC). CRMC is the investment advisor to American Funds. The chart listed each of the top-selling retailers with which AFD had a sponsorship arrangement and the amount of “target commissions” for each firm. The Fund’s trading desk directed brokerage commissions on American Funds portfolio transactions to the top-selling retailers on the chart based on the “target commissions” set by AFD for each firm. Throughout the year, the trading desk provided monthly updates to AFD about the amount of brokerage commissions directed to each of the top-selling retail firms. In turn, AFD occasionally provided updates to the top-selling retailers about how much of the target commissions had been directed to them throughout the year.

The trading desk not only directed brokerage commissions to firms that executed American Funds portfolio transactions, but also to retail firms that did not have the capacity to execute securities transactions. Those firms (approximately 30 of the 50 or so) entered into "step out" arrangements with clearing firms in order to receive the directed brokerage commissions.

NASD's investigation found that the clearing firms, which executed the trades, shared the brokerage commission with the retailers even though the retail firms provided no services in connection with the trade. The amount of commission that the retail firms received-typically seventy to ninety percent of the commission-depended upon the agreement between their firm and the clearing firm executing the trades. Twenty-nine million of the \$100 million in directed brokerage was paid in this fashion and ranged from a high of approximately \$5.4 million to one retailer to a low of approximately \$112,855 to another retailer.

AFD has requested a hearing before an NASD disciplinary panel.

NASD wishes to acknowledge the substantial assistance of the Pacific Regional Office of the Securities and Exchange Commission in this matter.